IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.771 OF 2005
IN
SUIT NO.2667 of 1985

Methibai wd.Sagarmal Marwadi & Anr. ..Plaintiffs.

V/s.

Ramjus Ramraj Upadhyay & Ors. ..Defendants.

And

Ansibai Ratanchand Marwadi & Ors. ..Applicants.

Mr.G.S.Pandit for applicants.

Ms Sheela Balsari for defendant No.1.

Mr.D.H.Mehta i/b M.P.Savla for defendant No.2 to 5.

CORAM: A.M.KHANWILKAR,J

DATE : AUGUST 16, 2005.

P.C. :

1. Heard counsel for the parties. Perused the pleadings.

2. Indeed, there is enormous delay in taking out the present application for setting aside abatement of the suit and for bringing heirs and legal representatives of the deceased plaintiffs No.1A and 1B on record. The question however, is whether the sufficient cause has been made out. Applicant No.1 is daughter-in-law of plaintiff No.1(A) and widow of

Plaintiff No.1(B) and applicant No.2 and 3 are grandsons of Plaintiff No.1(A) and sons of Plaintiff No.1(B). Applicant No.1 and 2 are resident of Village Bijova, in District Pali, Rajasthan and applicant No.3 is resident of Bhayandar, District-Thane. According to the applicants, they were not aware about the pendency of the present proceedings, else they would have taken steps to take out application at the earliest opportunity.

3. This case specifically made out on affidavit by applicants is doubted by the defendants on the sole assertion that the applicants were aware of the pendency of the above proceedings, which fact will be evident from the averments in paragraph-6 of the affidavit in support of the application. Even on close reading of relevant portion of paragraph 6 of affidavit in support, I fail to appreciate as to which part of this affidavit can be accepted to have conceded the position that the applicants were aware about the pendency of the proceedings. No firm stand has been taken on behalf of the defendant, atleast not brought to my notice as per the reply affidavit as filed. At best, in paragraph 20 of the reply affidavit of defendant No.1, it is stated that said defendant does not admit the contents of the averment

made by the applicants that they were not aware about the pendency of the proceedings and the applicants be put to strict proof thereof. Even this reply, in my opinion, is not clear assertion of the position that the applicants were in fact aware about the pendency of the present proceedings, obligating them to take out subject application in earlier point of time. In other words, I have no hesitation in accepting the explanation offered on behalf of the applicants that there is sufficient cause for excusing the applicant for having filed present application belated. The reasons mentioned which has been accepted by me, in my opinion, is sufficient cause to accept that prayer.

4. Counsel for the defendant No.1 would however contend that the suit had abated after the death of Plaintiff No.1(B) on 14th March, 1996. This submission clearly overlooks the legal position that if the estate of the original plaintiff is represented, as in this case by Plaintiff No.1(B), the question of abatement of suit would not arise during his life time till 19th March, 2001. However, I have accepted the explanation offered on behalf of the applicants for delay in taking present application. In my opinion, the applicants are

entitled for relief in terms of prayer clause (a), (b),(c) and (c).

5. Accordingly, chamber summons is made absolute in terms of prayer clause (a), (b), (c) and (d), on condition that applicants will carry out necessary amendment within four weeks from today and pay costs to defendant No.1 and 2 quantified at Rs.500/- each within that time.